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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

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| -----X | |
| In re | : |
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| SEARS HOLDINGS CORPORATION, et al., | : |
| | : |
| | : |
| Debtors.¹ | : |
| -----X | |

**Chapter 11
Case No. 18-23538 (RDD)
(Jointly Administered)**

**DEBTORS' RESPONSE TO LIMITED OBJECTION AND RESERVATION OF RIGHTS
OF TRANSFORM HOLDCO LLC TO THE PROPOSED STIPULATION AND ORDER
BY AND AMONG THE VILLAGE OF HOFFMAN ESTATES, THE DEBTORS, AND
THE COMMUNITY UNIT SCHOOL DISTRICT 300 CONCERNING 2017 EDA FUNDS
HELD IN THE SPECIAL TAX ALLOCATION FUND [ECF NO. 5322]**

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are as follows: Sears Holdings Corporation (0798); Kmart Holding Corporation (3116); Kmart Operations LLC (6546); Sears Operations LLC (4331); Sears, Roebuck and Co. (0680); ServiceLive Inc. (6774); SHC Licensed Business LLC (3718); A&E Factory Service, LLC (6695); A&E Home Delivery, LLC (0205); A&E Lawn & Garden, LLC (5028); A&E Signature Service, LLC (0204); FBA Holdings Inc. (6537); Innovel Solutions, Inc. (7180); Kmart Corporation (9500); MaxServ, Inc. (7626); Private Brands, Ltd. (4022); Sears Development Co. (6028); Sears Holdings Management Corporation (2148); Sears Home & Business Franchises, Inc. (6742); Sears Home Improvement Products, Inc. (8591); Sears Insurance Services, L.L.C. (7182); Sears Procurement Services, Inc. (2859); Sears Protection Company (1250); Sears Protection Company (PR) Inc. (4861); Sears Roebuck Acceptance Corp. (0535); SR – Rover de Puerto Rico, LLC (f/k/a Sears, Roebuck de Puerto Rico, Inc.) (3626); SYW Relay LLC (1870); Wally Labs LLC (None); SHC Promotions LLC (9626); Big Beaver of Florida Development, LLC (None); California Builder Appliances, Inc. (6327); Florida Builder Appliances, Inc. (9133); KBL Holding Inc. (1295); KLC, Inc. (0839); Kmart of Michigan, Inc. (1696); Kmart of Washington LLC (8898); Kmart Stores of Illinois LLC (8897); Kmart Stores of Texas LLC (8915); MyGofer LLC (5531); Rover Brands Business Unit, LLC (f/k/a Sears Brands Business Unit Corporation) (4658); Sears Holdings Publishing Company, LLC. (5554); Sears Protection Company (Florida), L.L.C. (4239); SHC Desert Springs, LLC (None); SOE, Inc. (9616); StarWest, LLC (5379); STI Merchandising, Inc. (0188); Troy Coolidge No. 13, LLC (None); BlueLight.com, Inc. (7034); Sears Brands, L.L.C. (4664); Sears Buying Services, Inc. (6533); Kmart.com LLC (9022); Sears Brands Management Corporation (5365); and SRe Holding Corporation (4816). The location of the Debtors' corporate headquarters is 3333 Beverly Road, Hoffman Estates, Illinois 60179.

Sears Holdings Corporation and its debtor affiliates, as debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the “**Debtors**”), hereby submits this response to the *Limited Objection and Reservation of Rights of Transform Holdco LLC to the Proposed Stipulation and Order by and among the Village of Hoffman Estates, the Debtors. And the Community Unit School District 300 Concerning 2016 EDA Funds Held in the Special Tax Allocation Fund* [ECF No. 5352] with the Bankruptcy Court (the “**Objection**”). In support of this response, the Debtors respectfully state as follows:

1. The Objection by non-party Transform Holdco, LLC (“**Transform**”) asserts that, “[t]o the extent Transform takes assignment of the EDA Agreement, Transform will receive the benefit of such releases as the Debtors’ assignee.” Objection ¶ 8. On that basis, Transform seeks to modify the language of the Stipulation and Order to incorporate that legal assertion into the language of the releases.² From the School District’s response to the Objection [ECF No. 5429] (“**School District Response**”), it is plain that the School District disagrees with Transform’s assertion as a matter of law. School District Response ¶¶ 13-14 (explaining that it negotiated the language of the releases granted to Debtors in a way that it believes preserves its argument that it can still recover a cure claim in the event the EDA Agreement is assumed and citing case law).

2. But, regardless of whether Transform is correct (that, in the event that it takes assignment of the EDA Agreement, it receives the benefit of the releases granted to Debtors), or if the School District is correct (that “such claim dissection of a claim is valid and enforceable”), their disagreement is a legal issue that does not need to be resolved as part of the Stipulation and Order. In other words, so long a Transform’s rights are preserved on this issue, it has no basis to object to the language of the release that the Debtors and the School District negotiated in the Stipulation and Order.

² All capitalized terms not otherwise defined herein shall have the meanings set forth in the Stipulation and Order.

3. Transform also seeks clarification that the Debtors' relinquishment of any rights it may have with respect to EDA Funds levied for tax year 2018 and any subsequent years would not in any way affect any rights Transform may have with respect to EDA Funds levied for tax year 2018 and any subsequent years, in the event that Transform takes assignment of the EDA Agreement. Objection ¶ 9. There is no dispute on this issue. *See* Stipulation and Order ¶ 18; School District Response ¶ 15.

4. The principal purpose of the Stipulation and Order was to resolve certain disputes between the School District, the Debtors, and the Village, including in connection with the disbursement of the 2017 EDA Funds currently held by the Village. In negotiating the language of Stipulation and Order, the parties did not intend to in any way impact the claims, defenses, arguments or other rights of any third parties, including Transform. *See, e.g.*, Stipulation and Order ¶ 18 ("Nothing in this Stipulation and Order . . . is intended or shall be construed to waive or release any claims, causes of actions, demands, suits, liabilities, obligations, losses, damages, offsets, arguments, defenses, facts, objections, counterclaims or other rights and positions that the School District, the Village, Transform Holdco LLC, Transform SR Holding Management, LLC, TF Hoffman Estates IL, LLC, or any other third party. . . may have with respect to the Debtors' compliance with the EDA Act and/or EDA Agreement, disbursements of the 2018 EDA Funds or any subsequent years' EDA Funds, as well as any cure claims arising under, or the Debtors' ability to assume, or assume and assign, the EDA Agreement pursuant to section 365 of the Bankruptcy Code.").

5. However, to the extent that Transform is concerned that Paragraph 18 of the Stipulation and Order does not sufficiently preserve its rights, Transform's objection can be resolved simply by broadening the protections set forth therein rather than making all of the other modifications that Transform proposes in its Objection.

6. Accordingly, in order to address the concerns raised in Transform's objection, the Debtors respectfully submit that the Stipulation and Order should be So Ordered by the Court after the following additional language is added to the end of Paragraph 18:

For the avoidance of doubt, nothing in this Stipulation and Order is intended to or shall be construed to waive or release any claims, causes of actions, demands, suits, liabilities, obligations, losses, damages, offsets, arguments, defenses, facts, objections, counterclaims or other rights and positions that the Debtors' assignee to the EDA Agreement, as applicable, may have, including, but not limited to, the right to assert that it is entitled to receive the benefit of any releases granted to the Debtors as part of the Stipulation and Order. Further, nothing in this Stipulation and Order shall waive, extinguish, or otherwise release the rights, if any, of Debtors' assignee to the EDA Agreement, as applicable, to EDA Funds levied for tax year 2018 or for any subsequent years.

Dated: October 21, 2019
New York, New York

/s/ Sunny Singh

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